IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 30798 of 2006(N)

(O.S.129/1977, MUNSIFF COURT, ALAPPUZHA)

PETITIONER:

V.V. SLEEBA, AGED 62 YEARS,
S/O. VARKEY, VARIKKALATHIL HOUSE, EDATHUA MURI,
EDATHUA VILLAGE, KUTTANADU TALUK,ALAPPUZHA DIST.

BY ADV. SRI.SIRAJ KAROLY

RESPONDENTS:

1. P.K. CHACKO,
KANDATHILPARAMBIL HOUSE, CHANGAMKARY EAST MURI,
EDATHUA VILLAGE, EDATHUA P.O.

2. P.K. JOSEPH,
KANDATHILPARAMBIL HOUSE, CHANGAMKARY EAST MURI,
EDATHUA VILLAGE, EDATHUA P.O.

3. P.K. KURUVILLA,
KANDATHILPARAMBIL HOUSE, CHANGAMKARY EAST MURI,
EDATHUA VILLAGE, EDATHUA P.O.

4. P.K. MATHEW,
KANDATHILPARAMBIL HOUSE, CHANGAMKARY EAST MURI,
EDATHUA VILLAGE, EDATHUA P.O.

5. P.K. THOMAS,
KANDATHILPARAMBIL HOUSE, CHANGAMKARY EAST MURI,
EDATHUA VILLAGE, EDATHUA P.O.

6. P.K. GEORGEKUTTY,
KANDATHILPARAMBIL HOUSE, CHANGAMKARY EAST MURI,
EDATHUA VILLAGE, EDATHUA P.O.

7. KUNJAMMA THOMAS,

KOZHUVANADU HOUSE, THANKANIPPARA,
PALA, KOTTAYAM DISTRICT.

8. V.V. PHILIP, AGED 67 YEARS,
S/O. VARKEY, VARIKKALATHIL MATHEW MANSION,
S.V. ROAD, CHIKKADAPPALLY, SECUNDERABAD,
ANDHRA PRADESH.

9. V.V. VARGHESE, AGED 65,
S/O. VARKEY, VARIKKALATHIL HOUSE, 16/4,
JEEVAN VILLA, VALLABHA NAGAR, BORIVOLLY,
MUMBAI, MAHARASHTRA.

10. V.V. THOMAS, AGED 58 YEARS,
S/O. VARKEY, VARIKKALATHIL HOUSE,SUBHAM APARTMENTS
CHUNNA ROAD, VASAYI EAST, THANA DISTRICT,
MUMBAI, MAHARASHTRA.

11. V.V. ABRAHAM, AGED 56 YEARS,
S/O. VARKEY, VARIKKALATHIL DHAISAR APARTMENTS,
DHAISAR WEST, MUMBAI, MAHARASHTRA.

12. PROF. V.V.MATHEW,
AGED 53 YEARS, TEACHER, VARIKKALATHIL HOUSE,
RAILWAY STATION ROAD, KUTTOOR,RAILWAY STATION P.O.
THIRUVALLA.

BY ADV. SRI.SATHISH NINAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.30798/2006

APPENDIX

PETITIONER'S EXHIBITS:

XT.P1: COPY OF THE O.S. NO.129/1977 FILED BEFORE THE MUNSIFF COURT, ALAPPZHA.

EXT.P2: COPY OF THE APPLICATION FILED BY THE PETITIOENR BEFORE THE TRIAL COURT.

EXT.P3; COPY OF THE APPLICATION TO CONDONE THE DELAY IN I.A. 2119/2004.

EXT.P4: COPY OF THE COUNTER STATEMENT FILED BY THE RESPONDENTS.

EXT.P5: COPY OF THE ORDER DATED 10.10.2006 IN I.A. 2118/2004 & I.A. NO. 2119/04 MUNSIFF COURT, ALAPPUZHA.

/TRUE COPY/

P.A. TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 30798 of 2006

Dated this the 20th day of August , 2007

JUDGMENT

Ext.P5 common order passed by the learned Munsiff in an application for reviewing an order dismissing an application for restoration of the suit and another application for condoning the delay of 4332 days caused in the matter of filing review application is under challenge in this writ petition under Article 227 of the Constitution. The petitioner is one of the sons of the deceased plaintiff. He claims to have been a power of attorney holder for his mother the plaintiff. The delay caused in the matter of filing the Review Petition is attributed to the bed riddenness of the petitioner on account of rheumatism . Evidence produced by the petitioner to substantiate his case that during the entire period from 4.4.1992 till 14.6.2004 he was completely bed ridden and hence incapacitated from moving the court earlier due to rheumatism for which he was treated by Nattuvaidyan PW4, was the Certificate issued by a Nattuvaidayan produced as Ext.A1. Interestingly Ext.A1 was obtained subsequent to the filing of the Review Petition.

2. I have gone through the impugned order and I have heard the submissions of Sri.Siraj Karoly, the learned counsel for the petitioner and those of Sri.Satish Ninan, the learned counsel for the contesting respondents. My attention was drawn by Sri.Siraj Karoly to the judgment of the Supreme Court in **Ram Nath Sao @ Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors. (2002 SAR (Civil) 302).** The learned counsel submitted that it is not the extent of the delay which matters, but what matters is whether the delay has been satisfactorily explained. Mr.Siraj also submitted that courts should endeavour to mete out substantial justice rather than depriving the litigants of opportunity to have an adjudication of a very meritorious cause. Counsel further submitted that there are documents which would show that the petitioner is even now in possession of the property.

3. Sri.Satish Ninan would submit that it has been rightly found by the court below that the explanation is not at all convincing.

4. There cannot be any dispute regarding the correctness of the propositions emerging from the judgment of the supreme Court in Ramnath Sahu's case (supra). The learned Munsiff found that the explanation for the delay was not at all convincing. According to me the learned Munsiff cannot be blamed at all for his view that

explanation offered for condonation of the inordinate delay is not convincing. In fact the affidavit in support of the application does not disclose the details of the illness at all Even the medical certificate was produced only subsequently. There was documentary evidence on the side of the respondents which would show that the petitioner's case that he was completely bed ridden during the period from 4.4.1992 till 15.6.2004 was false. It cannot be said that Ext.P5 order is vitiated to the extent of justifying interference by this court under supervisory jurisdiction. By all standards Ext.P5 is very reasonable order. Exercise of discretion by the court in the matter of condonation of delay under Section 5 of the Limitation Act cannot be said to be faulty.

Challenge against Ext.P5 fails. The writ petition is dismissed. No costs.

PIUS C. KURIAKOSE,
JUDGE.

dpk